

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:07-HC-2125-D

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	ORDER
)	
STANLEY CARL BURKHARDT,)	
)	
Respondent.)	

This case comes before the court on the government's motion in limine (D.E. 69) to exclude the testimony of Allen Burkhardt and Lynette Norfleet, proposed witnesses for respondent. Allen Burkhardt is listed in the final pre-trial order as respondent's brother, and the subject of his proposed testimony is family support for respondent and the assistance the family will provide him if he is released in obtaining housing, transportation, and employment. (Final Pre-Trial Order (D.E. 70) 10). Lynette Norfleet is listed as an investigator with the Office of the Federal Public Defender, and the subject of her proposed testimony is her investigation and interviews conducted to locate housing and employment opportunities for respondent if he is released. (*Id.* at 11). Respondent has filed a memorandum in opposition (D.E. 71).

The government bases its motion on the alleged irrelevance of the witnesses' proposed testimony. But at least one psychologist whom it has identified as an expert witness at the commitment hearing, M. Lela Demby, Ph.D., has considered information relating to the support available to respondent in the community. (Demby Rept. (D.E. 34-2) 23 (Bates # 2317) ("Mr. Burkhardt has no stable intimate relationship that could provide support upon release."), 25 (Bates # 2319) ("Due to the lack of interviews, Mr. Burkhardt's plans for discharge and reintegration into

the community are unknown at this time, thus this factor [of the Sexual Violence Risk -20 (SVR-20) actuarial instrument] will not be taken into consideration in this evaluation.”). The court therefore cannot conclude, as the government urges, that the testimony of Allen Burkhardt and Lynette Norfleet will necessarily be irrelevant. Its motion is accordingly DENIED.

In light of this disposition, the court declines to address the other contentions of the parties relating to the government’s motion. Further, this disposition, including the underlying analysis, is necessarily based on the record as it currently stands, and, therefore, is subject to further development of the record in proceedings before and during the commitment hearing, and the authority of the presiding District Judge over such proceedings.

SO ORDERED, this 5th day of December 2011.



James E. Gates
United States Magistrate Judge